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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Advanced Television Systems and  
Their Impact Upon the Existing  
Television Broadcast Service

)  
)  
) MM Docket No. 87-268  
)  
)

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS

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## SUMMARY

Media-Com Television, Inc. ("Media-Com"), the licensee of local origination LPTV stations, opposes the proposal for DTV implementation set forth in the 6th FNPRM, which entirely excludes LPTV facilities from the draft DTV Table, understates in the supporting IRFA the extent of expected economic impact on small businesses that are LPTV licensees, and unnecessarily proposes to continue the "secondary" status of LPTV after DTV implementation.

The Commission should explore all possible avenues for maximizing the spectrum available for local origination LPTV stations to convert to DTV. Moreover, in view of the improved spectrum utilization of DTV, local origination LPTV stations should be reclassified as primary, and should be permitted to increase power.

The entire spectrum that has been allocated for broadcast television should be utilized in order to accommodate local origination LPTV stations in the DTV Table; the Commission's proposal to establish a "core spectrum" will artificially restrict its capability of finding DTV allocations for local origination LPTV stations. To maximize the spectrum available for DTV, Media-Com proposes a variety of mechanisms, including: an update of the FCC's LPTV records to consider only operating local origination LPTV stations for DTV allotments; review and update of UHF taboo policies that were adopted to protect earlier generations of UHF television receivers; extension of the terrain-

shielding waiver policy; elimination of border-area restrictions on channel usage; and mandated inclusion of local origination LPTV stations in private allotment agreements.

Alternatively, should the Commission adopt its core spectrum proposal (or should some local origination LPTV stations be permanently displaced notwithstanding thorough relocation efforts), Media-Com suggests that adverse impact on LPTV stations could be minimized through temporary non-core channel assignments for local origination LPTV stations; a procedure to allot DTV channels to local origination LPTV stations after recovery of NTSC spectrum; and priority eligibility for local origination LPTV stations to apply for DTV channels on a protected basis.

All displaced local origination LPTV stations should be compensated by displacers for required channel changes. Permanently displaced local origination LPTV stations should be compensated by the displacer for their entire investments.

Media-Com further requests that notice be given of the entire scope of the Commission's proposed implementation procedures, to facilitate comment in a fully-informed manner.

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To: The Commission

COMMENTS

Media-Com Television, Inc. ("Media-Com"), pursuant to Sections 1.415 and 1.419 of the Commission's rules, hereby submits its comments in response to the Sixth Further Notice Of Proposed Rule Making ("6th FNPRM"), MM Docket No. 87-268, FCC 96-317, 11 FCC Rcd 10968 (released August 14, 1996), in the above-captioned proceeding to adopt rules and procedures implementing broadcast digital television ("DTV"). As discussed below, Media-Com urges the Commission to adopt an allocation scheme that (1) utilizes television's entire present spectrum allocation for DTV, and (2) includes locally-originating low power television stations ("local origination LPTV stations") in the DTV Table of Allotments ("Table"), in order to preserve and improve the locally-oriented low power television ("LPTV") service currently enjoyed by the public.

Media-Com is the licensee of LPTV Stations WAOH-LP, Channel 29, Akron, Ohio, and W35AX, Channel 35, Cleveland, Ohio. Since May of 1990, WAOH-LP (formerly known as W29AI) has provided LPTV service to the Akron area, devoting a significant portion of its

programming to locally-produced and locally-oriented programming. Through W35AX, Media-Com recently introduced its locally-oriented LPTV service to the Cleveland area. The attached Engineering Statement of Roy P. Stype, II, Carl E. Smith Consulting Engineers (Exhibit A hereto) reflects that the proposed DTV Table will displace at least one of Media-Com's LPTV stations. Accordingly, Media-Com is an interested party in this matter.

Media-Com opposes the proposal set forth in the 6th FNPRM, which entirely excludes LPTV facilities from the draft DTV Table. Media-Com respectfully submits that the wholesale omission of LPTV stations from the draft Table, and particularly the failure to consider local origination LPTV stations, cannot be reconciled with the public interest in retaining all present over-the-air locally-oriented viewer choices. In order to fulfill its statutory obligation to protect the public interest, the Commission should strive to implement DTV in a manner that will not decrease existing locally-oriented viewer choices. Rather, all possible steps should be taken to ensure that the licensees of local origination LPTV stations are accommodated in the DTV spectrum plan.

The LPTV service was established in 1982 to authorize television stations operating at lower powers than full-power stations to originate programming. In creating the LPTV service, the Commission recognized that programming originated by LPTV stations would increase diversity and could be particularly

tailored to address local interests. Low Power Television Service, BC Docket No. 78-253, 51 RR 2d 476, 484 (1982). The local origination LPTV stations were thus subjected to public interest programming requirements that govern full-power stations, including the rules and policies governing political broadcasting, licensee-conducted contests, obscenity, plugola, payola and lotteries, as well as equal employment opportunity obligations and emergency notification programs, to ensure that all program originators, including local origination LPTV stations, serve the public interest. Local origination LPTV stations have fulfilled their public service commitments in the years since. The Commission has repeatedly acknowledged the extent to which local origination LPTV stations have operated in the public interest. See e.g. 6th FNPRM, supra at para. 67 ("LPTV stations have increased the diversity of television programming and station ownership, and serve many rural and urban ethnic communities."); Second Report & Order/Further Notice of Proposed Rule Making ("2d R&O/FNPRM"), 7 FCC Rcd 3340, 3350 (1992) ("...LPTV and translator services provide important benefits, serving minority and specialized audiences, providing locally-based services to communities, and generally furthering diversity.")<sup>1/</sup>

Media-Com's record of service provides just one example of how local origination LPTV stations have increased diversity and served their local communities. Exhibit B hereto presents news-

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<sup>1/</sup>Footnotes omitted.



paper articles praising Media-Com's local programming efforts, which include public affairs programs hosted by community leaders, local call-in talk shows, coverage of high school football and basketball games, broadcast of local parades and concerts, local election coverage, a hunting-and-fishing show, and special seasonal programs, such as the currently-running live local call-in show "Talk To Santa." Media-Com received widespread recognition throughout Ohio for providing Northeast Ohio with the most extended live coverage of the Lucasville Prison riot, carrying the entire 3:45-11 PM crisis in real time. See e.g. "Tiny Akron station provides big-time Lucasville coverage," The Plain Dealer, April 22, 1993 (copy attached); "Only WAI tackles all-day broadcast," The Beacon Journal, April 23, 1993 (copy attached). It is indisputable that such programming is worth preserving in furtherance of the public interest.

The Commission has indicated that it believes "all" low power television stations are "small businesses" as defined by the Small Business Administration ("SBA")<sup>2/</sup>, and Media-Com wishes to confirm that its own LPTV operation comes within the SBA's definition. Small businesses will be affected economically by the DTV allotment plan, and, pursuant to Section 603 of the Regulatory Flexibility Act ("RFA"), the Commission appended to the 6th FNPRM an Initial Regulatory Flexibility Analysis ("IRFA") which purports to address the expected significant economic

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<sup>2/</sup>6th FNPRM at C-4.

impact of its DTV proposal on small entities. Media-Com respectfully submits that the IRFA greatly understates the extent of the expected significant economic impact of the Commission's DTV proposal on LPTV stations. Although Media-Com agrees with the Commission that most LPTV stations within major markets will be affected by the implementation of DTV<sup>3/</sup>, the Commission apparently has failed to recognize that the economic impact on those LPTV stations will likely be fatal. LPTV stations have been completely excluded from the proposed DTV Table, shrouding the future of these stations in uncertainty. Where implementation of DTV will throw LPTV stations off-the-air, licensees will lose their entire investments<sup>4/</sup>. Even where suitable replacement channels are found, channel changes will deplete these small operations' meager financial resources. In the interim, capital markets, which shun uncertainty, will close their doors to LPTV stations, with immediate repercussions on operations. The Commission's IRFA utterly fails to show what alternatives to such fatal economic consequences were considered, or why the Commission rejected alternatives which might minimize such impact, such as inclusion of local-origination LPTV stations in the proposed Table. Under these circumstances, it is difficult to understand

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<sup>3/</sup>6th FNPRM at C-6.

<sup>4/</sup>Moreover, repercussions will be felt throughout the economies of the localities served by displaced LPTV stations, in the form of defaults on site leases, studio leases, and bank loans; job losses; and the conversion of customized broadcasting equipment to scrap metal.

how the Commission's IRFA could pass muster. The IRFA should be revised to address regulatory alternatives which would provide DTV allotments for local origination LPTV stations, and which will require any displacer of an LPTV station to compensate LPTV stations for required channel changes. For example, in connection with the proceeding to convert spectrum in the 2 GHz band from use by microwave licensees to the newly-created personal communications service<sup>5/</sup>, the Commission adopted a procedure requiring new technology licensees unable to reach voluntary settlements with extant microwave facilities displaced to different frequencies to:

- guarantee payment of all relocation costs, including all engineering, equipment, and site costs and FCC fees, as well as any reasonable additional costs;
- complete all activities necessary for placing the new facilities into operation, including engineering and frequency coordination; and
- build and test the new microwave (or alternative) system.

Similar requirements should be mandated to establish local origination LPTV stations at alternate channel DTV facilities where

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<sup>5/</sup>Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, First Report and Order, 7 FCC Rcd 6886 (1993), Second Report and Order, 8 FCC Rcd 6495 (1993), Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993), Memorandum Opinion and Order, 9 FCC Rcd 1943 (1994), aff'd sub nom. Association of Public Safety Communications Officials International, Inc. v. FCC, 76 F.3d 395 (D.C.Cir., 1996).

the LPTV station must change channel to accommodate a new user at its present NTSC frequency. In view of the generally strapped finances of small business such as LPTV stations, monetary payment to the LPTV station by the displacer should be required as a prerequisite to the LPTV station commencing steps to change channels.

In any event, the Commission's failure to consider LPTV stations in the DTV Table is constitutionally suspect. The Commission proposes to displace existing LPTV operations on the basis that LPTV is a "secondary service." However, the Commission's interpretation of the extent to which LPTV is "secondary" is overbroad. In Low Power Television Service, supra at 494 and 499, the Commission announced that LPTV would be secondary to full-power television operations or pre-existing LPTV/translator stations, and certain land mobile operations. However, prior to the commencement of the ATV proceeding, the Commission gave no notice whatsoever that LPTV would be secondary to afterborn technologies. The NTSC spectrum is presently used by full-power and low-power television stations to provide NTSC service. DTV is an entirely new television service vying for that spectrum. Likewise, other technologies which might pursue "recovered" spectrum will be new entrants to the NTSC spectrum. Fundamental fairness and due process dictate that services later-in-time be secondary to LPTV.

In order to accommodate local origination LPTV stations in the DTV Table, the Commission should utilize the entire spectrum that has been allocated to television broadcast in the public interest. Sixth Report and Order ("Television Assignments"), Docket Nos. 8736 et.al., 41 FCC 148 (1952). The Commission's proposal to establish a "core spectrum," ultimately lopping off Channels 2-6 and 52-69 from television's spectrum allocation, should be rejected as violative of the legislative intent in directing that allocation. Indeed, it would appear that by shrinking the spectrum available for DTV, the Commission has artificially restricted its capability to accommodate local origination LPTV stations in the DTV Table<sup>6/</sup>. Over-the-air television today remains a vital, vibrant service greatly valued by a large percentage of the American public; television spectrum should not be poached for redistribution to other users at the expense of existing local program service. Indeed, redistribution of the NTSC spectrum to new services at auction would appear to be expressly prohibited by Section 309(j)(7)(A) of the Communications Act<sup>7/</sup>.

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<sup>6/</sup>The rationale for shrinking the presently available television spectrum to a restricted "core" is not immediately apparent, in view of the Commission's repeatedly expressed concerns that there is insufficient spectrum to factor in LPTV stations in making DTV assignments. See e.g. Second Further Notice of Proposed Rule Making, 7 FCC Rcd 5375, 5384 (1992); 2d R&O/FNPRM, supra at 3352.

<sup>7/</sup>Section 309(j)(7)(A) states:

(7) CONSIDERATION OF REVENUES IN PUBLIC INTEREST DETERMINATIONS. --

Furthermore, the Commission has stated no compelling public interest basis to continue to classify current local origination LPTV stations as secondary service after conversion to DTV<sup>8/</sup>. Presumably, since NTSC and DTV are not compatible, surviving LPTV stations will convert to DTV to ensure continued reception by the public. Conversion to DTV will improve the spectral efficiency of LPTV stations, presenting an opportunity to reclassify local origination LPTV stations as fully-protected "primary" stations. In addition, DTV's improved spectrum utilization should be a basis for converted LPTV stations to increase power to the extent possible on an interference-free basis.

Based upon the foregoing, Media-Com respectfully submits that the public interest mandates the Commission to explore all possible avenues for maximizing the spectrum available for DTV, in order to accord local origination LPTV stations DTV channels. Media-Com proposes the following mechanisms for spectrum maximization:

-Database update. The Commission advises that its current records show approximately 1,750 LPTV stations and 1,400 LPTV

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(A) CONSIDERATION PROHIBITED. -- In making a decision pursuant to section 303(c) to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

<sup>8/</sup>6th FNPRM at para. 65.

construction permits<sup>9/</sup>. Media-Com respectfully submits that the Commission should purge its records of expired LPTV construction permits and silent LPTV stations that have been off-the-air for at least one year (and are thus subject to cancellation under the Telecommunications Act of 1996)<sup>10/</sup>, so that agency efforts to locate DTV spectrum for local origination LPTV stations will not be clogged by fictitious facilities. Likewise, the Commission should seek to identify purported LPTV stations which are not truly "local originators" as defined by Rule Section 74.701(h), and thus do not come under the same public interest imperative for DTV conversion as local origination LPTV stations.

-Update UHF taboo policies. The "UHF taboos" are a set of NTSC transmission prohibitions against certain UHF television channel combinations and transmitter mileage separations that the FCC developed in 1952 to protect earlier generations of UHF television receivers from interference due to receiver overload, receiver induced intermodulation, local oscillator radiation from the receiver, and other technical phenomena<sup>11/</sup>. In view of subsequent strides in receiver technology, each taboo should be thoroughly reviewed, and modified as appropriate, prior to fash-

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<sup>9/</sup>6th FNPRM at C-4.

<sup>10/</sup>Pub. L. No. 104-104, 110 Stat. 56 (enacted February 8, 1996).

<sup>11/</sup>Television Assignments, supra. See also Rule Section 74.705.

ioning a DTV allotment table. See Engineering Statement attached hereto as Exhibit A.

-Extend terrain shielding waiver policy. The Commission should explicitly extend to DTV its present policy allowing LPTV stations to demonstrate interference-free operation based on terrain-shielding<sup>12/</sup>. See Engineering Statement attached hereto as Exhibit A.

-Eliminate border-area restrictions. By present United States-Canada agreement, certain UHF television channels, including Channels 14 and 15 in Cleveland, Ohio, cannot be used for land mobile operations. The 6th FNPRM proposes to eliminate these restrictions as they pertain to DTV allotments. Since these channels cannot presently be utilized for land mobile, FCC rules restricting LPTV use of these channels<sup>13/</sup> should also be eliminated. See Engineering Statement attached hereto as Exhibit A.

-Reserve non-core spectrum for digital LPTV. If the Commission adopts its proposal to migrate current NTSC full-power stations to core spectrum at Channels 7-51, VHF Channels 2-6 and UHF channels 52-69 should be reserved for digital conversion of present local origination LPTV stations -- with the proviso that

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<sup>12/</sup>Commission Policy Regarding Terrain Shielding in the Evaluation of Television Translator, Television Booster and Low Power Television Applications, 3 FCC Rcd 2664, recon. denied in part, 3 FCC Rcd 7105 (1988).

<sup>13/</sup>Rule Section 74.709.



manufacturers continue to be required to manufacture television sets capable of quality reception of the non-core signals<sup>14/</sup>.

-Sharing of Multiplexed DTV Channels. The Commission has recognized that DTV channels can be split efficiently into up to four discrete signals<sup>15/</sup>. Where necessary, the Commission should divide DTV channels for multiplexing into "television condominiums" shared by local origination LPTV stations in the area.

-Cable carriage. The 6th FNPRM asks whether the Commission should consider incentives to encourage carriage of LPTV stations on cable systems beyond the requirements set forth in Section 614(c) of the Communications Act<sup>16/</sup>. Although Media-Com does not believe that cable carriage is appropriate as a substitute for over-the-air transmission of LPTV stations, Media-Com heartily supports an expansion of requirements for cable systems to carry local origination LPTV stations<sup>17/</sup>.

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<sup>14/</sup>Pursuant to Section 303(s) of the Communications Act, it is within the Commission's authority "... to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting ..."

<sup>15/</sup>See e.g. Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry, MM Docket No. 87-268, 10 FCC Rcd 10540 (1995).

<sup>16/</sup> 6th FNPRM at para. 69.

<sup>17/</sup>Media-Com wishes to note that the government recently argued before the Supreme Court in the appeal of Turner Broadcasting et.al. v. FCC, 910 F. Supp. 734 (U.S. Dist., 1995), appeal docketed No. 95-992 (S.Ct., 1995), that smaller, niche

-LPTV participation in DTV negotiations. The 6th FNPRM proposes to allow voluntary negotiations among broadcasters as part of the DTV allotment/assignment process<sup>18/</sup>. By way of example, the Commission observes that channel numbering and identification factors might outweigh service area considerations for an individual broadcaster<sup>19/</sup>. Media-Com respectfully submits that it would not serve the public interest to allow the private self-interests of full-service broadcasters, such as channel preferences for mere promotional purposes, to override the possibility of making any DTV allotment whatsoever for local origination LPTV stations. Indeed, such a policy might lend itself to collusion among full-service broadcasters to deliberately exclude DTV allotments for existing local origination LPTV stations, in order to eliminate voices from a market's competitive environment.

Media-Com respectfully submits that the foregoing approaches should enable the Commission to stretch the capacity of current television spectrum sufficiently to accommodate every local origination LPTV station with a DTV allotment. Alternatively,

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broadcasters could be imperiled absent cable carriage. See Exhibit C hereto. The 6th FNPRM recognizes that LPTV stations fit precisely within the definition of "small" broadcasters. Accordingly, an expansion of "must carry" requirements to include all local origination LPTV stations would appear to be consistent with the government's position in the Turner case.

<sup>18/</sup>6th FNPRM at paras. 46-49.

<sup>19/</sup>6th FNPRM at para. 46.

should the Commission nevertheless adopt its core spectrum proposal (or should some local origination LPTV stations be permanently displaced notwithstanding thorough relocation efforts), Media-Com believes that the following steps could minimize the adverse impact on LPTV stations:

-Temporary non-core channel assignments. Media-Com agrees with the proposal in the 6th FNPRM to accord LPTV stations a temporary non-core if its present operating channel is displaced during the initial DTV allotment<sup>20/</sup>, as long as local origination LPTV stations would be ensured an ultimate core DTV allotment once core NTSC channels are recovered. While the 6th FNPRM would temporarily relocate LPTV stations to an extremely restricted spectrum block at Channels 60-69 during such an interim period, Media-Com would suggest expansion of the temporary LPTV spectrum to include Channels 2-6 and 51-59, in order to ensure that no local origination LPTV station is constrained to go silent even temporarily. In view of the severe economic burden of potentially successive channel changes on the small businesses that are LPTV licensees, displacers should be required to compensate LPTV stations for all channel changes, prior to any obligation by the LPTV station to commence the process of changing to another channel. Under no circumstances should local origination LPTV stations be assigned a non-core allotment unless

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<sup>20/</sup>6th FNPRM at para. 26.

manufacturers are required to continue manufacturing sets that are capable of receiving non-core channels<sup>21/</sup>.

-Automatic post-recovery allotments. After the DTV conversion, upon recovering the spectrum that had been used by NTSC stations, a DTV allotment plan should be effectuated for all existing local origination LPTV stations prior to making any other disposition of the recovered spectrum.

-Priority eligibility to apply for DTV channels. Alternatively, local origination LPTV stations that are not automatically assigned substitute DTV allotments should be given first priority to apply for DTV channels during a filing window in which eligibility is restricted to local origination LPTV stations.

-Protection from mutual exclusivity. Where local origination LPTV stations that are not automatically assigned substitute DTV allotments subsequently file DTV applications, the Commission should expand Rule Section 73.3572<sup>22/</sup> to protect those applications from mutually exclusivity.

-Monetary compensation. Permanently displaced local origination LPTV stations should be compensated by the displacer for their entire investments in the LPTV stations<sup>23/</sup>.

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<sup>21/</sup>See n.15, supra.

<sup>22/</sup>Rule Section 73.3572 presently protects from mutual exclusivity channel change applications filed by LPTV stations displaced by full-power stations.

<sup>23/</sup>See pp.6-7, supra.


As a final matter, proper notice of the entire scope of the Commission's proposed changes should be given prior to commencement of the conversion process. Media-Com respectfully submits that for notice to be legally sufficient, the entire allocation scheme, including interim assignments and the final assignments, should be announced. The DTV Table announces only an initial allocation plan as part of a multi-stage transition, which is insufficient for interested persons to make fully informed comments.

In sum, local origination LPTV stations have for many years served the public interest well, through presentation of community-based programming. In order to fulfill its statutory obligation to protect the public interest, the Commission should strive to implement DTV in a manner that will not prove to be a death-blow to these meaningful local voices. The Commission should take all possible steps to ensure that local origination LPTV stations are accommodated in the DTV spectrum plan and treated fairly in the DTV conversion process.

WHEREFORE, the premises considered, Media-Com, Inc., respectfully requests the Commission to adopt rules and policies for implementation of DTV in conformity herewith.

Respectfully submitted,

MEDIA-COM TELEVISION, INC.

By   
William B. Klaus  
Vice President

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Dated: November 22, 1996

A

ENGINEERING STATEMENT IN  
SUPPORT OF COMMENTS

MM DOCKET 87-268

Media-Com Television, Inc.  
Akron, OH

November 19, 1996

Prepared for: Mr. William Klaus  
Media-Com Television, Inc.  
P.O. Box 2170  
Akron, OH 44309-2170

**CARL E. SMITH CONSULTING ENGINEERS**



ENGINEERING AFFIDAVIT

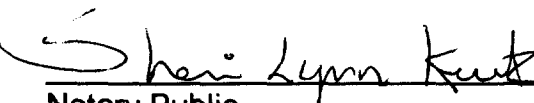
State of Ohio                                 )  
  ) ss:  
County of Summit                         )

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Media-Com Television, Inc., to prepare the attached "Engineering Statement In Support Of Comments - MM Docket 87-268."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.

  
\_\_\_\_\_  
Roy P. Stype, III

Subscribed and sworn to before me on **November 19, 1996**.

  
\_\_\_\_\_  
Notary Public

/SEAL/

SHERI LYNN KURTZ, Notary Public  
Residence - Summit County  
State Wide Jurisdiction, Ohio  
My Commission Expires June 14, 2000